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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

NO. **318** ✓

W. M. BONNER and MABEL R. BONNER, PETITIONERS,

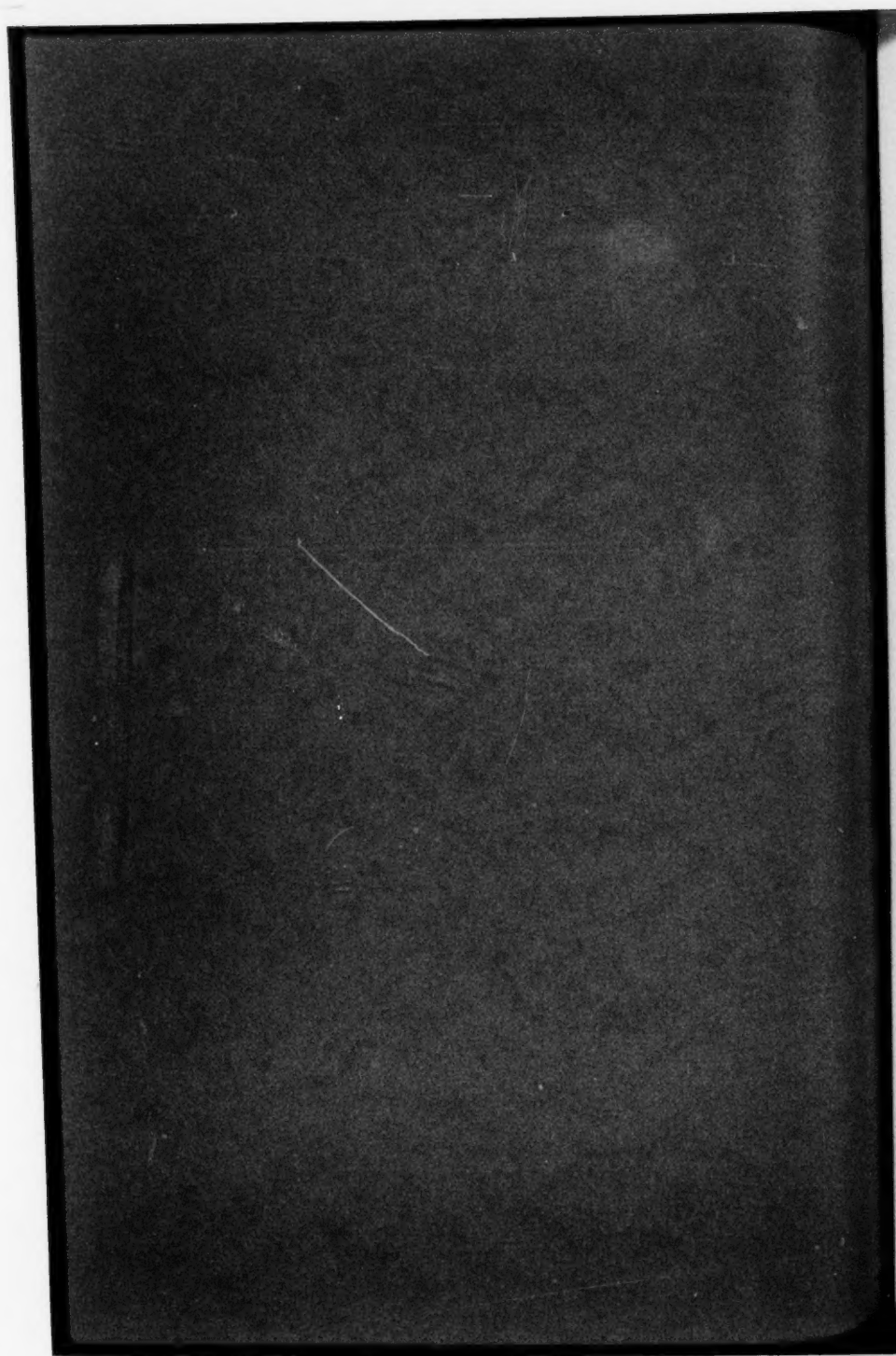
Versus

**W. L. SUTTER, A. C. HAGG, WILLIAM STREHLE and
H. S. HICKOK, RESPONDENTS.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT
AND BRIEF IN SUPPORT THEREOF**

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Circuit Court erred in failing and refusing to hold as res judicata the judgments of the District Court of the United States for the Eastern District of Oklahoma as shown in 60 Fed. (2d) 228 and 74 Fed. (2d) 139.

Authorities in Support Thereof:

Bonner vs. Cannon, 60 Fed. (2d) 228.....	9
Castillo vs. McConnico, 168 U. S. 683.....	12
Fayerweather vs. Rich, 195 U. S. 276.....	13
Hagar vs. Reclamation District No. 108, 111 U. S. 707.....	12
Jacobs vs. Marks, 182 U. S. 591.....	12
Reynolds vs. Stockton, 140 U. S. 264.....	12

II.	13
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The Circuit Court erred in following the findings of the trial court wherein there were no pleadings or evidence in the record to support the same.

III.	15
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The Circuit Court erred in failing and refusing to consider questions raised by the statement of points in the record.

IV.	16
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The Circuit Court erred in affirming the District Court and in failing to quiet petitioners' title.

Authorities in Support Thereof:

In re Galeener vs. Reynolds, 180 Okla. 200.....	17
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**TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:**

The petition of W. M. Bonner and Mabel R. Bonner
respectfully show to this court:

A.

**SUMMARY STATEMENT OF THE MATTER
INVOLVED**

1. This petition is for a review of the decision of the
United States Circuit Court of Appeals for the 10th Circuit

entered in the above cause June 10th, 1940 (R. 277), affirming a judgment of the United States District Court for the Eastern District of Oklahoma, February 22, 1939 (R. 248) and order overruling motion for new trial (R. 263). A petition for rehearing was filed in the Circuit Court of Appeals July 8, 1940 (R. 282) and denied July 13, 1940 (R. 282).

2. The questions presented are:

(a) Can a person be made to pay a judgment twice and is the judgment first paid *res adjudicata* in a second proceeding?

(b) When questions are presented by the pleadings, has a court a right to go outside of the pleadings for a basis of his judgment?

(c) Where a petitioner briefs his case in the court of appeals on the theory as presented by the pleading, has the court of appeals a right to ignore the same?

(d) Where the record is made up in violation of new Rule 75 and this is called to the trial court's attention and the court of appeals and each of said courts ignore the contention urged, will this court grant relief?

3. The facts are not in dispute.

J. S. Mullen was adjudged a bankrupt in 1922 and the Waddell Investment Company held first mortgage liens on a number of tracts of land. The Waddell Investment Company filed its claim in the bankruptcy court for itself and various assignees and pledgees (R. 236). The trustee in bankruptcy filed a petition asking that the lands be sold

free from liens and that the purchaser be allowed to assume the mortgage indebtedness in lieu of paying cash. The Waddell Investment Company agreed to this. Bonner purchased a number of tracts under this arrangement. Some four or five years thereafter the trustee filed his report showing that the Waddell Investment Company had been paid moneys that it was not entitled to and also showed that the Waddell Investment Company was due the trustee certain other sums of money, such as taxes, attorney's fees, trustee's fees, abstract fees, etc. (R. 153).

Now Bonner having assumed the mortgage indebtedness he was enjoined from paying the Waddell Investment Company, its assignees and pledgees (R. 17), and a hearing was had on this report and the Waddell Investment Company was held primarily liable for said moneys and expenses and Bonner was held secondarily liable (R. 155). A review was had before the District Court whereby the order of the referee was affirmed and an appeal was prosecuted by Bonner to the Court of Appeals where the judgment below was reversed with directions to the trustee to make a complete report (*Bonner vs. Cannon*, 60 Fed. (2d) 228). Such a report was filed and the referee made his report (R. 158) where the Waddell Investment Company, its assignees and pledgees were again held primarily liable and Bonner secondarily liable. A review of the order was had and was affirmed by the District Court (R. 172). An appeal was again taken to the Court of Appeals where the

judgment of the lower court was affirmed (See 74 Fed. (2d) 139).

In accordance with the judgment and the order of June 14, 1935 (R. 18), Bonner paid to the trustee, for the Waddell Investment Company, its assignees and pledgees \$5,343.41, being the moneys due the trustee by the Waddell Investment Company, its assignees and pledgees and having paid the same, he asked the court to credit him with the money paid by him on the indebtedness which he had assumed when he made his purchase, and this was refused.

Bonner then filed his petition (R. 12) showing that he had paid all of the indebtedness due the Waddell Investment Company, its assignees and pledgees and asked that the outstanding mortgages of record be cancelled as clouds upon his title. Respondents who were purchasers of the indebtedness from the Waddell Investment Company and after the bankruptcy court had taken jurisdiction of the estate, filed their answers claiming to be innocent purchasers and say they were not bound by the judgments rendered by the bankruptcy court and which were affirmed on appeal by the court of appeals, and filed cross actions against Bonner (R. 20 to 74, inclusive) and the trial court denied Bonner any relief and rendered judgment in favor of respondents on their cross petition and the court of appeals affirmed the judgment.

If the opinion of the Court of Appeals stands, Bonner will be paying this indebtedness twice. He paid the trustee

\$5,343.41. See (R. 143) memorandum of Judge R. L. Williams. By the judgment of the trial court which was affirmed by the Court of Appeals, Bonner is directed to pay respondents various sums of money and being the same moneys he paid to the trustee in bankruptcy.

4. Bonner relied on the judgments and orders made by the bankruptcy court as res judicata against respondents. The trial court failed to express itself upon this plea of Bonner and so did the Court of Appeals.

5. When the record was made up in this cause, Bonner claimed that same was made up in violation of new Rule 75 and this question was raised in the trial court and the trial court refused to strike from the record those matters included and which were in violation of new Rule 75 and this question was presented to the Court of Appeals and the Court of Appeals refused to pass upon it.

6. A certified copy of the entire record of the said case in the Circuit Court of Appeals is herewith furnished in accordance with the rules of this court.

B.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals is in direct conflict with the case of *Bonner vs. Cannon*, 60 Fed. (2d) 228, and the case of *First National Bank of Ardmore, Oklahoma vs. Bonner*, 74 Fed. (2d) 139.

2. If the decision of the Circuit Court of Appeals is accepted, Bonner will be paying the same moneys twice.

when
said?

3. If the decision of the Circuit Court of Appeals is accepted, Bonner will be deprived of property without due process and in violation of the 5th and 14th Amendments to the Constitution of the United States.

4. If the decision of the Circuit Court of Appeals is accepted, new Rule 75 is of no force and effect.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the 10th Circuit, commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 2027, *W. M. Bonner and Mabel R. Bonner vs. W. L. Suiter, A. C. Hagg, William Strehle and H. M. Hickok*, and that said judgment of said United States Circuit Court of Appeals for the 10th Circuit may be reviewed by this honorable court and that your petitioners may have such other and further relief in the premises as to this honorable court may seem meet and just and your petitioners will ever pray.

W. M. BONNER

and

MABEL R. BONNER

By H. A. LEDBETTER,
Their Attorney.